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No. 182

In the Supreme Court of the United States

OCTOBER TERM, 1960

BERNARD WILSON, PETITIONER

v.

DONALD F. SCHNETTLER, ARTHUR E. DOLL AND ROBERT E. WALTZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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OPINION BELOW

The opinion of the court of appeals (R. 12–18) is reported at 275 F. 2d 932.

JURISDICTION

The judgment of the court of appeals was entered on March 21, 1960. The petition for a writ of certiorari was filed on April 9, 1960, and granted on June 27, 1960, 363 U.S. 840. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, after an accused person has unsuccessfully moved in a state court for the suppression

evidence of narcotics seized by federal agents, he is entitled to readjudication of the matter in an action for declaratory judgment and injunctive relief brought by him in the federal court.

STATUTES INVOLVED

21 U.S.C. 198(a):

> The Secretary of the Treasury shall cooperate with the several states in the suppression of the abuse of narcotic drugs in their respective jurisdictions, and to that end he is authorized * * * (2) to arrange for the exchange of information concerning the use and abuse of narcotic drugs in said States and for cooperation in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several states. * * *

28 U.S.C. 2201:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. 2283:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its ju-

risdiction, or to protect or effectuate its judgments.

STATEMENT

The petitioner brought an action for declaratory judgment and injunctive relief in the United States District Court for the Northern District of Illinois, Eastern Division. In his amended petition he alleged that, after federal narcotics agents (the respondents) arrested him without a warrant, they searched him and found narcotics on his person, which were seized. He was not taken before a United States Commissioner, but was placed in the Cook County jail on a state charge of unlawful possession of narcotic drugs. Thereafter he was indicted by the Cook County Grand Jury, was arraigned in the state court, and pleaded not guilty (R. 7–8). The petitioner thereupon moved in the state court to suppress the use of the narcotics as evidence, and, on hearing, the following was developed, according to the allegations of the petitioner in the present suit (R. 8):

> (a) The respondents testified that they had a certain building under surveillance where they had information that narcotic drugs were being sold.
>
> (b) That the respondents saw your petitioner approach the said building and enter the same; that a short time later they observed your petitioner leave the building whereupon they arrested him.
>
> (c) That they could not state under oath whether he had the narcotic drugs in his possession before he entered the building under surveillance or not; that when they arrested him, they did not have a warrant for his arrest.

The petitioner did not claim that the foregoing was all the evidence developed at such hearing, or specifically allege that there was lack of probable cause to arrest. The motion to suppress was denied by the state court on the authority of *Draper* v. *United States*, 358 U.S. 307. The petitioner alleged in the present action that, in denying the motion, the state court applied the law of the forum and did not apply the Federal Rules of Criminal Procedure; that the state case was still pending; and that the petitioner believed that the respondents would be called to testify (R. 8–9). He prayed that the district court hold a hearing and determine by declaratory judgment whether the respondents acted pursuant to the Federal Rules of Criminal Procedure and, if it should find that the search and seizure were unlawful, that the court impound the narcotics and enjoin the respondents from testifying in the state case (R. 9).

The respondents moved to dismiss on the grounds that the petition failed to state a claim upon which relief could be granted because the court lacked jurisdiction over the subject matter of the action and because the Attorney General of the United States had not been served (R. 10). The district court sustained the motion to dismiss (R. 11). The court of appeals affirmed (R. 12–18).

SUMMARY OF ARGUMENT

The petitioner mistakenly interprets the facts in this case as being similar to those in *Rea* v. *United States*, 350 U.S. 214. There, federal officers instituted an action in the state court based on evidence

which had been suppressed by the federal court, whereupon their further participation in the state action was enjoined by the federal court. Here, the situation is reversed, with the petitioner seeking to avoid the result of an adverse ruling by the state court on his motion to suppress evidence by asking an adjudication by the federal district court on the same issue. Moreover, he does not have the justification, claimed in *Rea*, that there were separate state and federal actions and that the state action was designed to evade the results of the completed federal case. Here, there is only a state case, and it is still pending.

Also, this case does not present the question posed by the dissent in *Rea*, whether the Court's ruling would be different in the absence of a federal search warrant. Although the Court's opinion was based in part on the invalidity of the warrant, we may assume *arguendo* that a federal court which has suppressed evidence seized by federal officers without a warrant does have authority to enjoin their proceeding on the same evidence in a state court. But here no federal action had been instituted and the petitioner had not even attempted to obtain a ruling by a federal court until after he had raised the same question in, and received an adverse ruling by, the state court. Nor is the government here claiming a right on the part of its officers to make illegal searches, where the prosecution is by the state. Our contention is that a defendant in a state criminal action, who has sought and obtained therein a ruling as to the legality of

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the conduct of federal agents, may not demand a re-adjudication of that ruling for the state proceeding by a federal district court.

I

A. There was here no attempt on the part of the federal officers to avoid the supervision of the federal courts. Federal cooperation in the institution of the state action was taken pursuant to statute, which both authorizes and directs such cooperation. The legislative history of this statute shows a plain intent to require such cooperation with state authorities. The petitioner was charged under state rather than federal statute because he was a minor offender. His rights in the state courts were no less than in the federal system. The Illinois constitutional provision and its interpretation by the state courts are virtually identical with the Fourth Amendment and its interpretation by the federal courts.

B. Furthermore, the petition for declaratory judgment has not alleged facts supporting a charge of misconduct in the search by the federal officers. It is alleged that the agents could not state under oath whether the petitioner had narcotic drugs when he entered the building in question and that they had no warrant, but the question of what information they had is carefully skirted. It is not even alleged, by way of conclusion, that the officers lacked probable cause to arrest. In view of the position of the Illinois courts and the state court ruling herein, it appears that the failure to make the one allegation necessary

to establish the illegality of the officers' conduct under federal law was not inadvertent.

II

Aside from the foregoing considerations showing that the petitioner has asserted no illegal conduct by the federal officials, it was proper for the district court to refuse to retry the issues ruled upon by the state court. Some courts have reached this conclusion on the ground of lack of jurisdiction. Others have placed it on the ground that such a ruling is a proper exercise of discretion. Although the broader ground seems well based in reason and authority, we stress the narrower ground—discretion—in view of the favorable ruling of the district court.

The discretionary nature of declaratory relief appears from the permissive language of 28 U.S.C. 2201, from the legislative history of the provision, and from the interpretation uniformly given this form of relief. Although similar considerations govern the grant or denial of injunctive and declaratory relief, the precedents bearing on each have grown up separately and we treat them separately to show that discretion was properly exercised.

A. From our earliest history, the use of injunctions by the federal courts to restrain actions in the state courts has been strictly limited. Also, the courts have rarely, and only in exceptional circumstances, used injunctions to restrain criminal proceedings, directly or indirectly. Moreover, the petitioner has alleged no ground upon which to invoke the assistance of a court of equity. No irreparable injury, clear and imminent,

has been alleged or claimed. The district court properly exercised its discretion in refusing injunctive relief.

B. Similarly, it was a proper exercise of discretion by the district court to refuse review of the interlocutory state order by declaratory judgment. The function of this form of relief is to promote judicial economy by the expeditious settlement of disputes, not to create a new device for prolonging litigation. Frequently declaratory relief will be denied if there is another pending action in which the rights of the parties can equally well be determined. *A fortiori*, such relief will not be granted if the rights of the parties have already been adjudicated by a court of competent jurisdiction. An additional reason for withholding relief exists where the original order is by a state court, because of the desire not to disturb the relationship between the federal and state sovereignties.

ARGUMENT

The petitioner's argument is based upon the erroneous assumption of a similarity between the facts of this case and those in *Rea* v. *United States*, 350 U.S. 214. In *Rea*, federal officers, after an adverse ruling on suppression of evidence in the federal court, themselves instituted a state court action based on the same evidence. It was this resort to a state proceeding after the federal ruling which the federal court enjoined. Here, the situation is reversed. The petitioner is seeking to avoid the effect of an adverse ruling, this time by a state court, by resort to the federal

court. Moreover, he does not have the justification, claimed in *Rea*, that the action in which the first ruling had been made had been concluded. The state proceeding is still pending. This is in substance an attempt to obtain an immediate review by a federal district court of an interlocutory ruling by a state court. For reasons we elaborate, the federal courts do not grant either injunctive or declaratory relief in such situations.

The government is not here claiming a right on the part of its officers to make illegal searches. Nor does this case present the question, to which the petitioner addresses most of his argument, as to whether a federal court would, on a finding of an illegal search pursuant to an arrest without a warrant, have authority to prevent its officers from turning over the evidence to a state and testifying in state court. Although the *Rea* case based its ruling in part on the fact that a federal warrant was involved, we may assume *arguendo*, for the purposes of this case, that under the basic rationale of *Rea* a federal court which had granted a motion to suppress evidence (under Rule 41(e) of the Federal Rules of Criminal Procedure) seized in the course of a search made at the time of an arrest without a warrant can enjoin the use of such evidence in a state proceeding. But that question is not presented here. The petitioner did not, as he could have done, move in the federal courts under Rule 41(e). Instead, he first moved in the state court for suppression of the evidence and, only after he had been unsuccessful in that

court, did he seek (six months after his arrest) to have the federal court overrule the state court's decision upholding the validity of his arrest and of the search incident thereto. The government's position is that a defendant in a state criminal action, who has sought and obtained an interlocutory ruling in the state court as to the propriety of the conduct of federal agents, has no right to demand a readjudication of the issue by the federal district court.

I

THE PETITIONER HAS ALLEGED NO MISCONDUCT BY FEDERAL OFFICERS

A. THE ACTION OF THE FEDERAL OFFICERS IN TURNING THE EVIDENCE OVER TO THE STATE WAS PROPER AND WAS NOT FOR THE PURPOSE OF AVOIDING SUPERVISION BY THE FEDERAL COURTS

There was nothing evasionary in the action of the federal officers when they turned the petitioner over to state authorities for prosecution under the Illinois statute. Such cooperation is not only authorized, but is directed, by 21 U.S.C. 198(a):

> The Secretary of the Treasury *shall* cooperate with the several states in the suppression of the abuse of narcotic drugs in their respective jurisdictions, and to that end he is authorized * * * to arrange * * * for cooperation in the institution and prosecution of cases in the courts * * * of the several states. [Emphasis added.]

That such cooperation is not only authorized but directed is also supported by the legislative history of this section. It originated as an amendment to the bill which became the Act of June 14, 1930, 46 Stat.

585, which was apparently requested by the American Medical Association. In a letter by the secretary of that association, embodied in Senate Report 785, 71st Cong., 2d Sess., the criticism was made that the Act as drawn set up a narcotics dictatorship, which unduly concentrated authority in the federal Commissioner of Narcotics. The letter said, among other things:

> As against that amendment, it has been urged that it is unnecessary because Federal officers can cooperate now. While it is admitted that they probably can cooperate, it is confidently asserted that they will not do so. The desirability of such cooperation was brought to their attention in 1926, but cooperation is even yet refused. Moreover, the very fact that Federal narcotic officers seem to be opposed to the enactment of this amendment, is the best of evidence that they do not desire to cooperate and will not do so unless compelled by law.

It thus appears that this authority was not sought by federal authorities as a means of sidestepping federal requirements or to obtain an easier route to conviction of narcotics offenders in state courts. And in this case the reason that prosecution was undertaken as a state case here was that it involved a minor offense; major offenders are prosecuted in the federal court. Penalties under the Illinois statute are distinctly less severe than the federal law. 38 Ill. Stat. 192.28–38.

Manifestly, the illicit drug traffic is a problem which deeply concerns both state and federal governments. It is in the interest of the public that the officers of both cooperate to the fullest extent in

its suppression. If there was ever the slightest tendency (as suggested by the letter referred to above) on the part of federal officers to try to gain credit for themselves by turning over their evidence only to federal authorities, it was proper to discourage it by this provision.[1]

The petitioner seems to take the position that the agents here have flouted the federal rules and selected a forum which condones their action. The right to be protected against unreasonable searches and seizures is a right under the Fourth Amendment; the criminal rules as to suppression merely provide a remedy for such violation. Article II, section 6, of the Illinois Constitution guarantees the right, in substantially the same language as the Fourth Amendment. The interpretation of this constitutional provision and an exclusionary rule similar to that followed by the federal courts makes the Illinois law accord with

[1] *Ramirez* v. *Lozoya*, 253 F. 2d 85 (C.A. 9), the only case other than *Rea* relied upon by the petitioner, held that *Rea* was not applicable on the facts there presented. It was claimed that officers had beaten the defendant after his arrest, but no confession or admission was thereby obtained. The defendant was tried before the federal court without a jury and acquitted. Thereafter, one of the agents signed a complaint in the state court, based upon the same transaction. The federal court which had originally tried the defendant enjoined the federal agents from testifying in the state court. The court of appeals reversed, holding that, if there was any misconduct on the part of the federal officers, no evidence was obtained thereby. The court said at page 89: "We think it not the law that any narcotics seized by federal agents cannot go over to the state court for use as evidence. The statute (21 U.S.C.A. § 198) adjures the Secretary of Treasury to cooperate with the several states."

the principles established by this Court for the federal system. See, for example, *People* v. *La Bostrie*, 14 Ill. 2d 617, 620–623, 153 N.E. 2d 570; *People* v. *Tillman*, 1 Ill. 2d 525, 529–530, 116 N.E. 2d 344; *Elkins* v. *United States*, 364 U.S. 206, 224. The only "forum shopping" which has taken place in this case has been that of the petitioner, who initiated a hearing in the state court and, when the ruling was against him, attempted to try again in the federal court.

B. THE COMPLAINT FAILED TO SET FORTH FACTS WHICH WOULD JUSTIFY SUPPRESSION OF THE EVIDENCE UNDER FEDERAL LAW

The petition filed in the federal district court does not state a claim upon which relief can be granted. On its face it shows that it is seeking retrial of an interlocutory order of a state court denying a motion to suppress, and, as we discuss *infra*, that in itself is sufficient to justify denial of the relief sought. At this point we stress its deficiency even in setting forth grounds for suppression under federal law. The complaint states in paragraph 2 that the petitioner was arrested without a warrant and narcotics seized from his person. But that is insufficient to show illegal action since federal narcotics officers have authority to arrest on probable cause without a warrant. 26 U.S.C. 7607(2). The petitioner nowhere states that the agents did not have probable cause to arrest him, and there is no reason, on the basis of what he does allege, to assume that the agents did not have probable cause. Indeed, the petitioner's allegations seem to have been carefully drawn to avoid meeting the

question of probable cause. He states that the agents "could not state under oath whether he had narcotic drugs in his possession before he entered the building under surveillance" and that the agents had no warrant. He does not state that the agents testified they had no other information. Inasmuch as the reported Illinois decisions show that Illinois courts do not condone arrests without probable cause,[2] it is reasonable to assume that this failure to allege lack of probable cause was not inadvertent.[3] Since, therefore, the petitioner failed to make the one allegation absolutely necessary to a claim of illegal action by federal officers, he failed to state a sufficient basis to invoke action by a federal court, irrespective of the aspect of the case involving review of the interlocutory orders of a state court.

II

THE COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING RELIEF

Aside from the considerations discussed above in Point I, the fact that it appeared on the face of the complaint that the petitioner was asking a federal court to retry an issue determined by an interlocutory action of a state court alone justified the district court in denying relief.

The problem of separate court systems in a federal government—as it is relevant to this case—was ex-

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[2] *People* v. *La Bostrie*, 14 Ill. 2d 617, 620–623, 153 N.E. 2d 570; *People* v. *Tillman*, 1 Ill. 2d 525, 529–530, 116 N.E. 2d 344; see *Elkins* v. *United States*, 364 U.S. 206, 224).

[3] Since the Illinois court based its ruling on *Draper* v. *United States*, 358 U.S. 307, there obviously was testimony as to probable cause at the hearing.

plicated by Chief Justice Taft in *Ponzi* v. *Fessenden*, 258 U.S. 254, 259:

> We live in the jurisdiction of two sovereignties, each having its own system of courts to declare and enforce its law in common territory. It would be impossible for such courts to fulfill their respective functions without embarrassing conflict unless rules were adopted by them to avoid it. The people for whose benefit these two systems are maintained are deeply interested that each system shall be effective and unhindered in its vindication of its laws. The situation requires, therefore, not only definite rules fixing the powers of the courts in cases of jurisdiction over the same persons and things in actual litigation, but also a spirit of reciprocal comity and mutual assistance to promote due and orderly procedure.
>
> One accused of crime has a right to a full and fair trial according to the law of the government whose sovereignty he is alleged to have offended, but he has no more than that. He should not be permitted to use the machinery of one sovereignty to obstruct his trial in the courts of the other, unless the necessary operation of such machinery prevents his having a fair trial.

Some courts have held that there is no power to review by declaratory judgment or injunction the ruling of a court of coordinate jurisdiction. Others have held that refusal to make such review is a proper exercise of discretion. None, so far as we have been able to determine, permits such review. Since the one area trenches upon the other, we stress the narrower point that discretion was here properly exer-

cised. The general nature of this discretion is briefly reviewed before considering the propriety of the district court's denial of both declaratory and injunctive relief.

The language of the Declaratory Judgment Act, 28 U.S.C. 2201, *supra*, p. 2, indicates that relief under it is intended to be discretionary.[4] The Act is permissive, rather than mandatory in form, providing that the court "may declare the rights and other legal relations of any interested party seeking such declaration". H. Rept. 1264 of the 73d Congress, Second Session, page 2, states that "large discretion is conferred upon the courts as to whether or not they will administer justice by this procedure". See Borchard, *Declaratory Judgments* (2d ed. 1941), 312–314.

Likewise, the granting of equitable relief lies within the sound discretion of the court. The language of Mr. Justice Stone in *Di Giovanni* v. *Camden Fire Insurance Assn.*, 296 U.S. 64, 73, is applicable:

> While the consequences of the court's grant of equitable relief cannot affect its power, they nevertheless have an important bearing on the exercise of the judicial discretion which must guide a court of equity in determining whether it should grant or withhold a remedy which it has within its power to give.

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[4] *Federation of Labor* v. *McAdory*, 325 U.S. 450, 471; *Eccles* v. *Peoples Bank*, 333 U.S. 426, 431; *Kerotest Mfg. Co.* v. *C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183–184; *Public Serv. Comm'n* v. *Wycoff Co.*, 344 U.S. 237, 241, 243.

Distinctions can be made as to the breadth of the discretion which may be exercised in declaratory actions and injunctions.[5] However, in general, the same considerations apply. Declaratory actions, while *sui juris*, bear a close kinship to equitable actions[6] and are frequently treated as substantially identical with them. *Eccles* v. *Peoples Bank*, 333 U.S. 426; *Kerotest Manufacturing Co.* v. *C-O-Two Co.*, 342 U.S. 180; *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293, 299. However, in spite of the similarity in the considerations which govern the granting or withholding of the two kinds of relief, we treat them separately, for the reason that the precedents governing them have, to a large extent, grown up separately.

A. INJUNCTIVE RELIEF WAS PROPERLY DENIED

When Congress, in 1793, first expressly granted federal courts the right to issue injunctions, a limitation was placed thereon that the writ should not be used to stay proceedings in any state court.[7] Although the limitation has not always been literally

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[5] It is not necessary to prove the absence of other legal remedy in order to be entitled to declaratory relief. Rule 57, F.R. Civ. P.; *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227; *Nashville, C. & St. L. Ry. Co.* v. *Wallace*, 288 U.S. 249.

[6] *Developments in the Law, Declaratory Judgments—1941–1949*, 62 Harv. L. Rev. (1949) 787, 788.

[7] 1 Stat. 335, now 28 U.S.C. 2283. The purpose of the limitation was largely to alleviate the burden of the circuit duties of the members of the Supreme Court. *Toucey* v. *New York Life Insurance Co.*, 314 U.S. 118, 130; Taylor & Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 Yale L. J. (1933) 1169, 1170.

applied,[8] this statute and others limiting federal injunctive power over state proceedings[9] express a long continued legislative policy against federal interference with state proceedings, by the use of injunctions. *Toucey* v. *New York Life Insurance Co.*, 314 U.S. 118; *Stefanelli* v. *Minard*, 342 U.S. 117.

Many times the federal courts have refused to interfere with the course of civil litigation in the state courts. The Court said in *Peck* v. *Jenness*, 7 How. 612, 624–625:

> It is a doctrine of law too long established to require a citation of authorities that, where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other court; and that, where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court. These rules have their foundation, not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one, if they dare to proceed in the other.

See, also, *Taylor* v. *Taintor*, 16 Wall. 366, 370; *Clarke* v. *Rist*, Fed. Cas. No. 2,861 (C.C. D. Ohio); *Earl* v.

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[8] Appleman, *Jurisdictional Conflicts in Declaratory Judgment Actions*, 29 Kent. L. J. (1940) 48, 51–55; Taylor & Willis, *supra*, n. 7, 42 Yale L. J. at 1194–1197.

[9] 28 U.S.C. 1341, 1342, 2284.

Raymond, Fed. Cas. No. 4,243; *Randall* v. *Howard,* 2 Black 585; *Williams* v. *Benedict,* 8 How. 107; *Peale* v. *Phipps,* 14 How. 367, 374; *Orton* v. *Smith,* 18 How. 263, 266. And in *Harkrader* v. *Wadley,* 172 U.S. 148, 164, the Court pointed out that the principle was equally applicable to both civil and criminal actions:

> When a state court and a court of the United States may each take jurisdiction of a matter, the tribunal whose jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted; and this rule applies alike in both civil and criminal cases.

The unwillingness of the courts to interfere by injunction with criminal prosecutions, which had its origin in British precedent,[10] has likewise been many times expressed. *Beal* v. *Missouri Pacific R. Corp.,* 312 U.S. 45, 49; *Watson* v. *Buck,* 313 U.S. 387; *Spielman Motor Sales, Inc.* v. *Dodge,* 295 U.S. 89; *Cline* v. *Frink Dairy Co.,* 274 U.S. 445; *Fenner* v. *Boykin,* 271 U.S. 240; *Ackerman* v. *International Longshoremen's & Warehousemen's Union,* 187 F. 2d 860 (C.A. 9); 4 Pomeroy, *Equity Jurisprudence* (5th ed.), 1361b, p. 978.

The petitioner has stated no ground for invoking equitable jurisdiction. It is not pointed out in what respect his legal remedy is inadequate. On the contrary, we have noted, *supra,* pp. 12–13, 14, that Illinois follows an exclusionary rule patterned on federal law, interpreting a constitutional provision which varies

[10] *Mayor & Corporation of York* v. *Pilkington,* 2 Atk. 302, 9 Mod. 273.

only minutely from the wording of the Fourth Amendment. In *Douglas* v. *City of Jeannette,* 319 U.S. 157, 162–164, the Court held that city authorities would not be enjoined from enforcing an invalid ordinance limiting the dissemination of religious literature. The reason for refusing such relief was stated by Chief Justice Stone, at page 163:

> Congress, by its legislation, has adopted the policy, with certain well defined statutory exceptions, of leaving generally to the state courts the trial of criminal cases arising under state laws, subject to review by this Court of any federal questions involved. Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; * * *.

In *Stefanelli* v. *Minard,* 342 U.S. 117, the Civil Rights Act, 42 U.S.C. 1983, was alleged as the basis for an injunction in the United States district court to prevent the fruit of an allegedly unlawful search by state officers from being used as evidence in the state criminal trial. While the basis of invoking federal jurisdiction was different from that in the instant case, the reasoning of the Court is equally applicable where the basis for federal jurisdiction is claimed to be the misconduct of federal officers. The Court said, at page 120:

> The maxim that equity will not enjoin a criminal prosecution summarizes centuries of

> weighty experience in Anglo-American law. It is impressively reinforced when not merely the relations between coordinate courts but between coordinate political authorities are in issue. The special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law, has been an historic concern of congressional enactment, see, *e.g.*, 28 U.S.C. §§ 1341, 1342, 2283, 2284(5). This concern has been reflected in decisions of this Court, not governed by explicit congressional requirement, bearing on a State's enforcement of its criminal law.

The results of such resort to the federal courts, aptly illustrated by the present case, were considered at pages 123–124:

> The consequences of exercising the equitable power here invoked are not the concern of a merely doctrinaire alertness to protect the proper sphere of the States in enforcing their criminal law. If we were to sanction this intervention, we would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality in the impaneling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, in the creation of an unfair trial atmosphere, in the misconduct of the trial court—all would provide ready opportunities, which conscientious counsel might be

bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution.

Of course, it would be possible in the future to avoid such complications by bringing all narcotics charges in the federal court when there has been a search in which federal officers participated. However, this would add to the load of the federal courts and would be an unnecessary hardship on minor offenders, who would thereby incur the more severe penalties of the federal law. The benefit of such concentration in the federal courts to defendants, even to this petitioner, might well be illusory.[11]

B. THE COURT ALSO PROPERLY EXERCISED ITS DISCRETION IN DENYING DECLARATORY RELIEF

Insofar as we have been able to determine, declaratory relief has never been granted to review a prior ruling by a court of competent jurisdiction. On appeal, such denial of relief has been approved either on the ground that there was no jurisdiction to pass on the matter already ruled upon, or on the ground that refusal to review the ruling was a proper exercise of discretion.

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[11] It is possible that in the event the Supreme Court of Illinois should uphold the state ruling refusing to suppress the evidence the petitioner would not, under *Wolf* v. *Colorado*, 338 U.S. 25, have an opportunity to review the ruling in this Court since the admission of the evidence would not violate the Fourteenth Amendment. Nevertheless, this does not mean that at this stage the federal courts should interfere with the orderly proceedings of the state courts which under state law may be expected to exclude the evidence if it was in fact illegally seized.

This Court has never had occasion to pass on this exact question directly, although it has passed on it inferentially by going a step further in denying declaratory relief where an action has been pending in the state court which could as well or better determine the issue. *Brillhart* v. *Excess Insurance Co.*, 316 U.S. 491, 494; *Federation of Labor* v. *McAdory*, 325 U.S. 450; *Public Service Comm'n* v. *Wycoff Co.*, 344 U.S. 237. See also *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227, 239, where the Court noted, in granting declaratory relief, that no action had been instituted in the state court to determine the issue presented. The clear implication of all these cases is that where the matter had been presented and passed upon by a state court, it would not be proper for a federal court to pass on the same question.

This has been many times expressly held by the lower courts. A concise expression of the reasons for such holding is given in *McLain* v. *Lance*, 146 F. 2d 341, 345–346 (C.A. 5), certiorari denied, 325 U.S. 855.

> Where a State Court, having jurisdiction in a suit between the same parties over the same subject matter, has defined and declared the rights of the parties, the federal District Court, acting as a court of admiralty or otherwise, is without power to redeclare, review, or set aside such judgment or decree of the state court, whether it be interlocutory or final, because it is not a court of review for either state or federal cases.

And at page 346:

> The object of the statute is to afford a new form of relief where needed, not to furnish a new

> choice of tribunals or to draw into the federal courts the adjudication of causes properly cognizable by courts of the state. * * * No litigant is entitled to two declarations of the same right.

Similar expressions of the law have been given in other circuits. In *National Cancer Hospital of America* v. *Webster,* 251 F. 2d 466, 468 (C.A. 2), Judge Learned Hand described the petition for declaratory judgment as being "no more than an effort to use the District Court to review decisions already made by the state court, or to substitute that court for the state court in the decision of such issues as it had not decided." In *American Automobile Insurance Co.* v. *Freundt,* 103 F. 2d 613, 617 (C.A. 7), the court said, in denying declaratory relief:

> It was not intended by the act to enable a party to obtain a change of tribunal and thus accomplish in a particular case what could not be accomplished under the removal act * * *.

The same point was stressed in *Maryland Casualty Co.* v. *Boyle Construction Co.,* 123 F. 2d 558, 562 (C.A. 4). See also *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.,* 312 U.S. 270; *American Fidelity & Casualty Co.* v. *Service Oil Co.,* 164 F. 2d 478, 480 (C.A. 4); *Franklin Life Insurance Co.* v. *Johnson,* 157 F. 2d 653 (C.A. 10).

In *H. J. Heinz Co.* v. *Owens,* 189 F. 2d 505, 509 (C.A. 9), Judge Hastie saw a parallel in the statutory denial of power to interfere with a state proceeding by injunction (28 U.S.C. 2283), expressing the view that such a legislative declaration of policy would bind the courts as to the less drastic declaratory relief, so

that a grant of a declaratory judgment would be an abuse of discretion. As in the denial of injunctive relief (*Stefanelli* v. *Minard*, 342 U.S. 117, 123), the use of the declaratory judgment procedure for the piecemeal trial of issues in a lawsuit has been disapproved. *Doby* v. *Brown*, 232 F. 2d 504 (C.A. 4), certiorari denied, 352 U.S. 837; *Western Contracting Corp* v. *National Surety Corp.*, 163 F. 2d 456 (C.A. 4).

The federal courts refuse to interfere by declaratory judgment with actions pending in other federal courts where the issues can as well be determined there. *Western Supplies* v. *Freeman*, 109 F. 2d 693, 695 (C.A. 6); *Carbide & Carbon Chemical Corp.* v. *United States Industrial Chemicals*, 140 F. 2d 47 (C.A. 4). A collateral attack upon a criminal conviction by declaratory judgment, rather than by motion to vacate sentence under 28 U.S.C. 2255, was made in *Clark* v. *Memolo*, 174 F. 2d 978, 981 (C.A. D.C.). In denying relief, the court said that the purpose of the Declaratory Judgment Act did not include the determination of rights already duly adjudicated. Similar relief was denied in *Hurley* v. *Lindsay*, 207 F. 2d 410 (C.A. 4) and *Tuckson* v. *Clemmer*, 231 F. 2d 658 (C.A. D.C.).

The Declaratory Judgment Act, of course, does not enlarge the jurisdiction of the federal courts, but is procedural only. *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227; *Skelly Oil Co.* v. *Phillips Co.*, 339 U.S. 667, 671–672; *Aetna Casualty & Surety Co.* v. *Quarles*, 92 F. 2d 321 (C.A. 4). By its own terms, its application is limited to cases "of actual controv-

ersy within its jurisdiction." Here the petitioner is seeking in the federal courts review of an interlocutory decision of a state court. There is no reason for the federal courts to act in that situation.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

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SUPREME COURT OF THE UNITED STATES

No. 182.—October Term, 1960.

Bernard Wilson, Petitioner, v. Donald F. Schnettler, Arthur E. Doll, and Robert E. Waltz.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February 27, 1961.]

Mr. Justice Whittaker delivered the opinion of the Court.

Respondents, who are federal narcotics agents, arrested petitioner without a warrant in Cook County, Illinois, and, in the course of an incidental search, found narcotic drugs on his person which they seized. Respondents then delivered petitioner to the Cook County authorities who confined him in the county jail. In due course, the county grand jury returned an indictment charging petitioner with possessing the narcotics in violation of an Illinois statute. Soon after his arraignment and plea of "not guilty," petitioner moved the court for an order suppressing the use of the narcotics as evidence in his impending criminal trial. After full hearing, including the taking of evidence (not contained in this record), the court denied the motion.

Before the case was reached for trial, petitioner brought the present action against respondents in the Federal District Court in Chicago to impound the narcotics (though he did not allege that respondents have possession of them) and to enjoin their use, and the respondents from testifying, at the trial of the criminal case in the state court. The very meager complaint alleged, in addition to the facts we have stated, only a few of the facts relating

to petitioner's arrest,[1] and that he believes "respondents will be called to testify in [the state criminal] case that the petitioner unlawfully had in his possession the narcotic drugs seized by the respondents. . . ." It concluded with a prayer for the relief stated.

Respondents moved to dismiss the complaint for failure to state a claim upon which relief could be granted. After a hearing, the District Court granted the motion and dismissed the action. On appeal, the Seventh Circuit affirmed. 275 F. 2d 932. To consider petitioner's claim that the judgment is repugnant to controlling rules and decisions of this Court, we granted certiorari. 363 U. S. 840.

We have concluded that the action was properly dismissed, and that the judgment must be affirmed.

Although the complaint alleged that the arrest was made without a warrant, there was no allegation that it was made without probable cause. In the absence of such an allegation the courts below could not, nor can we, assume that respondents arrested petitioner without probable cause to believe that he had committed or was committing a narcotics offense. And if they had such probable cause, the arrest, though without a warrant, was lawful and the subsequent search of petitioner's person

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[1] In this respect, the complaint alleged only that at the hearing on the motion to suppress "the following facts and circumstances were developed:

"(a) The respondents testified that they had a certain building under surveillance where they had information that narcotic drugs were being sold.

"(b) That the respondents saw your petitioner approach the said building and enter the same; that a short time later they observed your petitioner leave the building whereupon they arrested him.

"(c) That they could not state under oath whether he had the narcotic drugs in his possession before he entered the building under surveillance or not; that when they arrested him, they did not have a warrant for his arrest."

and the seizure of the found narcotics were validly made incidentally to a lawful arrest." *Weeks* v. *United States*, 232 U. S. 383, 392; *Carroll* v. *United States*, 267 U. S. 132, 158; *Agnello* v. *United States*, 269 U. S. 20, 30; *Giordenello* v. *United States*, 357 U. S. 480, 483; *Draper* v. *United States*, 358 U. S. 307, 310–311.[2] For this reason alone the complaint failed to state a claim upon which relief could be granted.

Nor did the complaint allege, even in conclusionary terms, that petitioner does not have a plain and adequate remedy at law in the state court to redress any possible illegality in the arrest and incidental search and seizure. Indeed, the allegations of the complaint affirmatively show that petitioner does have such a remedy in the Illinois court and that he has actually prosecuted it there, but only to the point of an adverse interlocutory order. That court, whose jurisdiction first attached, retains jurisdiction over this matter to the exclusion of all other courts—certainly to the exclusion of the Federal District Court—until its duty has been fully performed, *Harkrader* v. *Wadley*, 172 U. S. 148, 164;[3] *Peck* v. *Jenness*, 7 How. 612, 624–625,[4] and

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[2] Article II, § 6, of the Illinois Constitution protects against unreasonable searches and seizures in substantially the same language as the Fourth Amendment. That State's interpretation of its constitutional provision and its exclusionary rule, similar to the one followed in the federal courts, makes the Illinois law accord with the principles established by this Court for the federal system. See, *e. g.*, *People* v. *LaBostrie*, 14 Ill. 2d 617, 620–623, 153 N. E. 2d 570; *People* v. *Tillman*, 1 Ill. 2d 525, 529–530, 116 N. E. 2d 344.

[3] "When a state court and a court of the United States may each take jurisdiction of a matter, the tribunal where jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is exhausted; and this rule applies alike in both civil and criminal cases." *Harkrader* v. *Wadley*, *supra*, at 164.

[4] "It is a doctrine too long established to require citation of authorities that . . . where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right

it can determine this matter as well as, if not better than, the federal court. If, at the criminal trial, the Illinois court adheres to its interlocutory order on the suppression issue to petitioner's prejudice, he has an appeal to the Supreme Court of that State, and a right if need be to petition for "review by this Court of any federal questions involved." *Douglas* v. *City of Jeannette*, 319 U. S. 157, 163. It is therefore clear that petitioner has a plain and adequate remedy at law in the criminal case pending against him in the Illinois court.

There is still another cardinal reason why it was proper for the District Court to dismiss the complaint. We live in the jurisdiction of two sovereignties. Each has its own system of courts to interpret and enforce its laws, although in common territory. These courts could not perform their respective functions without embarrassing conflicts unless rules were adopted to avoid them. Such rules have been adopted. One of them is that an accused "should not be permitted to use the machinery of one sovereignty to obstruct his trial in the courts of the other, unless the necessary operation of such machinery prevents his having a fair trial." *Ponzi* v. *Fessenden*, 258 U. S. 254, 259. Another is that federal courts should not exercise their discretionary power "to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is both clear and imminent; . . . ." *Douglas* v. *City of Jeannette*, *supra*, at 163.

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cannot be arrested or taken away by proceedings in another court. These rules have their foundation, not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one, if they dare to proceed in the other." *Peck* v. *Jenness*, *supra*, at 624–625.

By this action, petitioner not only seeks to interfere with and embarrass the state court in his criminal case, but he also seeks completely to thwart its judgment by relitigating in a trial *de novo* in a federal court the very issue that he has already litigated in the state court. "If we were to sanction this intervention, we would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality, in the impaneling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, in the creation of an unfair trial atmosphere, in the misconduct of the trial court [and, we may add, in the ruling of motions to suppress evidence, and in ruling the competency of witnesses and their testimony]—all would provide ready opportunities, which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution." *Stefanelli* v. *Minard*, 342 U. S. 117, 123–124.

Notwithstanding all of this, petitioner contends that the averments of his complaint were sufficient to entitle him to the relief prayed under the principles announced in *Rea* v. *United States*, 350 U. S. 214. But it is plain that the averments of this complaint do not invoke or even approach the principles of the *Rea* case. That case did not hold, as petitioner's contention assumes, that narcotic drugs lawfully seized by federal officers are inadmissible, or that such officers may not testify about their seizure, in state prosecutions. Such a concept would run counter to the express command of Congress that federal officers

shall cooperate with the States in such investigations and prosecutions. See 21 U. S. C. § 198 (a). Indeed, the situation here is just the reverse of the situation in *Rea*. There, the accused had been indicted *in a federal court* for the unlawful acquisition of marihuana, and had moved in that court, under Rule 41 (e) of the Federal Rules of Criminal Procedure (18 U. S. C. Rule 41 (e)), for an order suppressing the use of the marihuana as evidence at the trial. After hearing, the District Court, finding that the accused's arrest and search had been made by federal officers under an illegal warrant issued by a United States Commissioner, granted the motion to suppress. The effect of that order, under the express provisions of that Rule, was that the suppressed property "shall not be admissible in evidence at any hearing or trial." Cf. *Reina* v. *United States*, 364 U. S. —; 81 S. Ct. 260, 262–263. Despite that order, one of the arresting federal officers thereafter caused the accused to be rearrested and charged, in a state court, with possession of the same marihuana in violation of the State's statute, and threatened to make the State's case by his testimony and the use of the marihuana that the federal court had earlier suppressed under Rule 41 (e). Thereupon, to prevent the thwarting of the federal suppression order, petitioner moved the federal court to enjoin that conduct. That court denied the motion and its judgment was affirmed on appeal. On certiorari, this Court, acting under its supervisory power over the federal rules, "which extends to policing [their] requirements and making certain that they are observed," 350 U. S., at 217, reversed the judgment, because "A federal agent [had] violated [and was about further to violate] the federal Rules governing searches and seizures—Rules prescribed by this Court and made effective after submission to the Congress. See 327 U. S. 821, *et seq.*" 350 U. S., at 217.

How different are the facts in the present case! Here there is no allegation or showing that any proceedings ever were taken against petitioner under any federal rule or in any federal court. There has been no finding that petitioner's arrest was unlawful or that the search of his person which yielded the narcotics was not incident to a lawful arrest and therefore proper. The state court's finding—the only court involved and the only finding on the matter—is the other way. Nor is there even any allegation in the complaint that the arrest was not made upon probable cause, although it is admitted that the search was made incident to the arrest.

It is clear that the complaint was properly dismissed.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 182.—October Term, 1960.

Bernard Wilson, Petitioner, v. Donald F. Schnettler, Arthur E. Doll, and Robert E. Waltz.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February 27, 1961.]

Mr. Justice Stewart, concurring.

I could not base affirmance of the judgment upon the ground that the petitioner's motion was technically deficient in failing to recite the talismanic phrase "without probable cause." Nor do I think the District Court lacked power to issue the requested injunction, either by reason of 28 U. S. C. § 2283 or the rule formulated in *Harkrader* v. *Wadley*, 172 U. S. 148, 164. It seems to me that *Rea* v. *United States*, 350 U. S. 214, established that District Courts do have such power.*

But I join in affirming the judgment. The petitioner has failed to state a case warranting equitable relief under the standards of *Stefanelli* v. *Minard*, 342 U. S. 117, 122, and *Douglas* v. *City of Jeannette*, 319 U. S. 157, 163. As the Court's opinion points out, the factors which justified the issuance of an injunction in *Rea* are not present here.

*The dissenters in *Rea* agreed that this power exists. See 350 U. S., at 219.

SUPREME COURT OF THE UNITED STATES

No. 182.—October Term, 1960.

Bernard Wilson, Petitioner, v. Donald F. Schnettler, Arthur E. Doll, and Robert E. Waltz.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February 27, 1961.]

Mr. Justice Douglas, with whom The Chief Justice and Mr. Justice Brennan concur, dissenting.

The trial judge on respondent's motion [1] dismissed an "amended petition for declaratory judgment" that made the following allegations: Petitioner was arrested by two of the respondents, agents of the Federal Bureau of Narcotics, who acted without a warrant. He was searched by these agents at the time of his arrest and narcotics were seized from him. Though imprisoned, he was neither taken before a Federal Commissioner, nor charged with a crime against the United States. Instead, he was indicted for the possession of those same narcotics under the laws of Illino . He unsuccessfully attempted to exclude the use of these narcotics or the testimony of the arresting agents by a motion made in the state court where "the law of the forum was applied and the Federal Rules of Criminal Procedure were not applied." Petitioner based jurisdiction of the federal court on "the supervisory powers of Federal Courts over federal law enforcement agencies." Alleging that "the respondents will be called to testify in such case that the petitioner had in his possession the narcotic drugs seized by the respondents," he asked, first, a declaratory judgment as to whether the

[1] The motion to dismiss specified three grounds. Of them, only two are before this Court, *i. e.*, failure to state a cause of action and lack of jurisdiction over the subject matter.

federal agents had acted illegally in the arrest and incidental search of petitioner and, second, in the event that the search had been illegal, the impounding of the seized narcotics and an injunction against the respondent's testifying "in respect to the narcotic drugs so seized" in the state proceedings.

These allegations, liberally construed, entitle petitioner to a hearing, and, if they are supported by evidence, to the relief he seeks. In *Rea* v. *United States*, 350 U. S. 214, we held that an injunction would issue to prevent the use by federal agents in a state proceeding of the fruits of an illegal search. "The obligation of the federal agent is to obey the Rules [of Criminal Procedure]. They are drawn for innocent and guilty alike. They prescribe standards for law enforcement. They are designed to protect the privacy of the citizen, unless the strict standards set for searches and seizures are satisfied. That policy is defeated if the federal agent can flout them and use the fruits of his unlawful act either in federal or state proceedings." *Id.*, 217–218.

Under Rule 41 (e), Federal Rules of Criminal Procedure, the federal court is instructed to hear and determine a motion to suppress made by "a person aggrieved by an unlawful search and seizure [where] the property was illegally seized without a warrant."[2] Implicit in

[2] Rule 41 (e) reads: "A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for the use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant as issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored

that duty is the judicial enforcement of the provisions of the Fourth Amendment and Acts of Congress which limit the power of arrest and search. Judicial enforcement is no less to be invoked *after* the federal agents have acted than it is *before* they have acted, *i. e.*, when they apply to the courts for a warrant. That, as I understand, is the teaching of the *Rea* case.

It is said that petitioner has failed to allege that the arrest in question was made without probable cause, and thus illegal under federal law. See 26 U. S. C. § 7607 (2). It is said that he has failed to point out in what way his "legal remedy" (*i. e.*, the hearing on the motion to exclude in the state court) was inadequate. It is said that a federal court, in the exercise of discretion to grant or to deny declaratory relief, should refuse to act in these circumstances, especially since the grant of it would interfere with a state prosecution. I believe that none of these objections is well taken.

If it should appear at a hearing that the arrest and incidental search were legal under federal law, then petitioner would have no case. But surely his failure to make the magic allegation that the arrest was "without probable cause," should not cause him to be summarily cut off.[2] At most, the defect complained of would justify his being required to amend his pleading.

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unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing."

[2] The Court of Appeals did not proceed on any such narrow grounds. It speaks of the "allegedly illegal arrest and search," and places its decision on the "[d]ecisive factual differences [which] distinguish the *Rea* case from the instant proceeding." 275 F. 2d 932, 933.

Petitioner's failure to allege the inadequacy of his "legal remedy" may be as easily disposed of. He is invoking, in this proceeding, the "supervisory powers" of the federal courts over the administration of federal law enforcement. That power is lodged in the federal courts. Congress could have entrusted the enforcement of all federal laws to state tribunals, as has India. But the First Congress made the decision to create a federal judicial system, complete unto itself. Some federal laws are enforceable in state tribunals. See, *e. g.*, *Testa* v. *Katt*, 330 U. S. 386. But the Federal Rules of Criminal Procedure are not among them. Since the federal agents have chosen to avoid the federal courts, the issue as to compliance with the Federal Rules cannot be litigated in any way other than by this proceeding. In the state trial the issue will not be whether the federal agents have acted within the limits of their federal authority, but whether, under the state constitution, the search was a reasonable one.[4] Under the Supremacy Clause state law must give way, where, for example, a state procedure violates the Federal Constitution. Yet under the decision of this Court in *Wolf* v. *Colorado*, 338 U. S. 25, not even the duty of excluding evidence, because it was seized in violation of the command of the Fourth Amendment, is imposed on state courts as a requirement of federal law. The proper forum—indeed the only one available for litigation of compliance with that requirement—is the federal court.

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[4] Since petitioner has alleged that the Illinois court did not apply the standards imposed by the federal courts, we may leave aside questions which might be raised by the state court incorporation of a federal standard to guide their determinations under state law. Cf. *Standard Oil Co. of Calif.* v. *Johnson*, 316 U. S. 481; *People* v. *Grod*, 385 Ill. 584, 586, 53 N. E. 2d 591, 593 (the state and federal constitutional provisions are said to be "in effect the same").

We should also overrule the objection[5] based on the policy of 28 U. S. C. § 2283 which restrains a federal court from intermeddling with state proceedings, especially state criminal proceedings. Section 2283[6] prohibits, in certain circumstances, the grant by a federal court of "an injunction to stay proceedings in a State court." What we said about the relief sought in *Rea* v. *United States*, *supra*, is applicable here:

> "The District Court is not asked to enjoin state officials nor in any way to interfere with state agencies in enforcement of state law . . . . No injunction is sought against a state official. The only remedy asked is against a federal agent who, we are told, plans to use his illegal search and seizure as the basis of testimony in the state court." *Id.*, 216–217.

In this case, as in *Rea*, the interference, if any, is an indirect one and only incidental to placing federal officers under federal standards of behavior. If the considerations, which led to decisions like *Stefanelli* v. *Minard*, 342 U. S. 117, were not controlling in *Rea* v. *United States*, *supra*, they should not be controlling in this case.

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[5] Respondents stress the fact that petitioner's prayer asks for a "declaratory judgment" and quote language from decisions of this Court that speak of a judicial discretion to deny such relief. See, *e. g.*, *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 240–241; *Brillhart* v. *Excess Ins. Co.*, 316 U. S. 491, 494–495; *Public Service Comm'n* v. *Wycoff Co.*, 344 U. S. 237, 241–245. Such cases are not applicable. The judicial discretion to deny declaratory relief is in the penumbra of the constitutional requirement of "case or controversy." There is no such issue here. Discretion, if it exists at all, must stem from the general equity notions based on the availability of other remedies. Indeed, petitioner's request for declaratory relief is no more than an inartistic demand that the federal judge entertain the motion and "receive evidence on any issue of fact necessary to the decision of the motion." Rule 41 (e). That it is denominated as a request for declaratory judgment is mere surplusage.

[6] See, *e. g.*, *Harkrader* v. *Wadley*, 172 U. S. 148; *Ex parte Young*, 209 U. S. 123.

The rationale of *Rea* v. *United States*, *supra*, was that the federal courts had a specific duty of supervising compliance of federal law enforcement officers with the Federal Rules of Criminal Procedure. "A federal agent has violated the federal Rules governing searches and seizures—rules prescribed by this Court and made effective after submission to the Congress. See 327 U. S. 821 *et seq.* The power of the federal courts extends to policing those requirements and making certain that they are observed." *Id.*, 217. The *Rea* case is now distinguished because in that case other contacts with the federal courts existed beyond the bare fact that federal officers were the actors in the illegal search. The additional contacts in the *Rea* case were three: (1) The search was made under a purported warrant of the federal courts. (2) An indictment based on the acquisition of the seized narcotics was filed in the federal court, although subsequently dismissed. (3) A motion to suppress was made in the federal court, while the indictment was pending, and was granted.

Those factual differences should not lead to a different result in this case. The decisive factor, indeed the only relevant one in this case, as in *Rea*, is that federal law enforcement officers are the actors in an illegal search and seizure.

If the officers in *Rea* had acted without any warrant, the result would not have been different. The victim of the search could certainly have obtained an order of suppression against the use of the evidence in the federal courts. Rule 41 (e) specifically so provides. The motion to suppress might have been made before an indictment was filed. Again, the victim would be entitled to an order regarding the use of the evidence in federal courts. See *Go-Bart Co.* v. *United States*, 282 U. S. 344, 358. The federal agents would not be "flouting" the Rules any the less, if, in either of these two situations, they had, after the issue of the order under Rule 41 (e), prepared to use the suppressed evidence in a state court.

To be sure no federal indictment was ever filed in this case; and the state proceeding was commenced prior to the issue of any order by a federal court on the legality of the search and seizure made by the federal law officers. That fact affords no reason why the victim of lawless federal police may not apply to a federal court for relief. When the Court relies on this circumstance it repudiates the very basis of the *Rea* decision, *viz.*: that the substantive command of the Federal Rules of Criminal Procedure has been "flouted" by federal officers.

Under the Fourth Amendment, the judiciary has a special duty of protecting the right of the people to be let alone, except as warrants issue on a showing of probable cause. This special relation of federal courts to the control of federal officials who lawlessly invade the privacy of individual citizens reaches far back into history. It had, at first, an ominous note, as the courts themselves were the instrument of oppression. It was before a colonial court that James Otis, Jr. made his plea against the infamous "writs of assistance."[7] Since then the courts have played an honorable role in the protection of privacy. Warrants, which were at the start only a form of judicial protection extended to officials, have become the means for protecting the individual. A judicial officer has been interposed between the suspicious official and the citizen.[8] The role of the courts has been active. In *Weeks* v. *United States*, 232 U. S. 383, 391–392, this Court said:

> "The effect of the Fourth Amendment is to put the courts of the United States and Federal officials, in

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[7] See *Boyd* v. *United States*, 116 U. S. 616, 624–625; *Harris* v. *United States*, 331 U. S. 145, 155, 157–159 (dissenting opinion); *Frank* v. *Maryland*, 359 U. S. 360, 374, 376–381 (dissenting opinion).

[8] This same evolution whereby the judiciary became the protectors of privacy took place in England. "[F]or these warrants are judicial acts, and must be granted upon examination of the fact." 2 Hale, History of the Pleas of the Crown (1st Am. ed. 1847), 150.

> the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law. This protection reaches to all alike, whether accused of crime or not, and the duty of giving it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws."

That case forged the doctrine, now firmly entrenched, that the federal courts will not admit illegally seized property as evidence.* It is this doctrine which was the core of the substantive command whose procedural outlines are reflected in Rule 41 (e). It is this doctrine that we unsympathetically reject today.

Our cases reflect the belief that federal judges have a distinct mission to perform in actively protecting the right of privacy of the individual. We said in *Johnson* v. *United States*, 333 U. S. 10, 14:

> "Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers."

This particular view reflected the deep-lying assumption that the command of the Fourth Amendment im-

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* See, *e. g.*, *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385; *Gouled* v. *United States*, 255 U. S. 298; *Go-Bart Co.* v. *United States*, 282 U. S. 344; *Taylor* v. *United States*, 286 U. S. 1; *Harris* v. *United States*, 331 U. S. 145; *Johnson* v. *United States*, 333 U. S. 10; *Brinegar* v. *United States*, 338 U. S. 160; *Miller* v. *United States*, 357 U. S. 301; *Draper* v. *United States*, 358 U. S. 307; *Henry* v. *United States*, 361 U. S. 98; *Elkins* v. *United States*, 364 U. S. 206; *Rios* v. *United States*, 364 U. S. 253.

plies continuous supervision by the judiciary over law enforcement officers quite different from the passive role which courts play in some spheres. The rule that a search, otherwise legal, may be illegal for failure to apply to a magistrate for a warrant was expressed in *Trupiano* v. *United States*, 334 U. S. 699, and *McDonald* v. *United States*, 335 U. S. 451. We stated "that search warrants are to be obtained and used wherever reasonably practicable." *Trupiano* v. *United States*, *supra*, 709. We have occasionally retreated as *United States* v. *Rabinowitz*, 339 U. S. 56; *Frank* v. *Maryland*, 359 U. S. 360; and *Abel* v. *United States*, 362 U. S. 217, show. But we returned to the basic philosophy of the Fourth Amendment in *Rea* v. *United States*, *supra*. When I wrote for the Court in that case saying that "[t]he obligation of the federal agent is to obey the Rules," I thought we meant obedience to the substantive law for which those rules offer a procedural matrix.[10] It is difficult for me to believe that that protection is limited to those situations where the federal officers invoke the "process" of the federal court. Rule 41 (e) provides a remedy by way of suppression where "the property was illegally seized without warrants," as it was in this case, if the allegations are supported by evidence.

When we forsake *Rea* v. *United States* and tell the federal courts to keep hands off, we wink at a new form of official lawlessness. Federal officials are now free to violate the Federal Rules that were designed to protect the individual's privacy, provided they turn the evidence

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[10] It is said that the present proceeding is not one under Rule 41 (e), since there are no federal "proceedings" within the meaning of the enabling statute. 18 U. S. C. § 3771. But the policy remains the same, and the analogy of an independent suit based on the same rights is clear. Nor can it be said that 21 U. S. C. § 198 (a) creates any exemption for federal officers from the standards otherwise imposed on them. Cooperate they may, but they may not break the law to do so.

unlawfully obtained over to the States for prosecution. This is an evasion of federal law that has consequences so serious that I must dissent. This case may be inconsequential in the tides of legal history. But the rule we fashion is an open invitation to federal officials to "flout" federal law, to make such searches as they desire, to forget about the search warrants required by the Fourth Amendment, to break into homes willy-nilly, and then to repair to state courts. There the Federal Rules do not apply; there the exclusionary rule of *Weeks* v. *United States*, *supra*, does not apply. See *Wolf* v. *Colorado*, *supra*. There evidence, unlawfully obtained by the standards that govern federal officials, may be used against the victim. A few States have exclusionary rules as strict as those commanded by the Fourth Amendment.[11] Many permit the use in state prosecutions of evidence which would be barred if tendered in federal prosecutions.[12] The tender regard which is expressed for federal-state relations will in ultimate effect be a tender regard for federal officials who flout federal law. Today we lower federal law enforcement standards by giving federal agents *carte blanche* to break down doors, ransack homes, search and seize to their heart's content—so long as they stay away from federal courts and do not try to use the evidence there. This is an invitation to lawlessness which I cannot join.

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[11] See, *e. g.*, Texas Code of Crim. Proc., Art. 727a, as amended by Acts 1953, 53d Leg., p. 669, c. 253, § 1; *People* v. *Cahan*, 44 Cal. 2d 434, 282 P. 2d 905.

[12] See, *e. g.*, *People* v. *Gonzales*, 356 Mich. 247, 97 N. W. 2d 16.